

UNITED STATES COURT
DISTRICT OF MASSACHUSETTS **FILED**
IN CLERKS OFFICE

TERRI J. PEDATO, As Mother and Next)
Friend of RICHARD MORRILL)
Plaintiff)

2004 JUN -3 A 11: 25

VS.)

CIVIL ACTION DISTRICT COURT
NO: 03CV-12223-RGS DISTRICT OF MASS

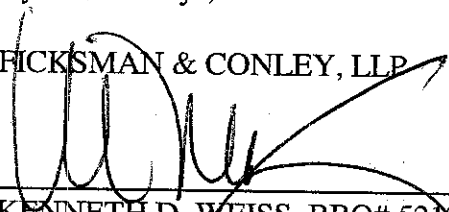
FRED G. ARRIGG, JR., M.D.,)
Defendant)

MOTION OF THE DEFENDANT, FRED G. ARRIGG, M.D., TO TRANSFER
THE CLAIMS AGAINST HIM TO MASSACHUSETTS
SUPERIOR COURT FOR THE LIMITED PURPOSE OF CONVENING A
MEDICAL MALPRACTICE TRIBUNAL

Now comes the Defendant Fred G. Arrigg, M.D. and hereby moves pursuant to M.G.L. c. 231, § 60B that the claims against him be transferred to the Massachusetts Superior Court for the limited purpose of convening a medical malpractice tribunal. In support of this motion the Defendant relies on the memorandum attached hereto.

Respectfully submitted,
By his attorneys,

HICKSMAN & CONLEY, LLP


KENNETH D. WEISS, BBO# 521240
NICOLE M. MASON, BBO# 647915
98 North Washington Street, Suite 500
Boston, MA 02114
(617) 720-1515

CERTIFICATE OF SERVICE

I, Nicole M. Mason, attorney for said defendant, hereby certify that I have this day served a copy of the foregoing document upon all parties, via first class mail, postage prepaid, directed Joseph G. Abromovitz, Esq., 858 Washington Street - Third Floor, Dedham, MA 02026.

Signed under the pains and penalties of perjury.

Dated: June 1, 2004


NICOLE M. MASON

UNITED STATES COURT
DISTRICT OF MASSACHUSETTS

FILED

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2004 JUN -3 A 11: 26

TERRI J. PEDATO, As Mother and Next)
Friend of RICHARD MORRILL)
Plaintiff)

U.S. DISTRICT COURT
DISTRICT OF MASS
CIVIL ACTION
NO: 03CV-12223 RGS

VS.)
)
FRED G. ARRIGG, JR., M.D.,)
Defendant)

**MEMORANDUM OF THE DEFENDANT FRED G. ARRIGG, M.D. IN SUPPORT
OF HIS MOTION TO TRANSFER THE CLAIMS AGAINST HIM TO
MASSACHUSETTS SUPERIOR COURT FOR THE LIMITED PURPOSE OF
CONVENING A MEDICAL MALPRACTICE TRIBUNAL**

BACKGROUND

In the above-captioned matter, Plaintiff Terri J. Pedato alleges that the Defendant Fred G. Arrigg, M.D. rendered negligent medical care to the minor plaintiff Richard Morrill, causing injury to him. The Defendant submits that M.G.L. c. 231, § 60B requires that this action be referred temporarily to the Massachusetts Superior Court for the limited purpose of convening a medical malpractice tribunal.

ARGUMENT

MASSACHUSETTS GENERAL LAWS c. 231, § 60B REQUIRES THAT THIS CASE BE TRANSFERRED TO THE MASSACHUSETTS SUPERIOR COURT FOR THE LIMITED PURPOSE OF CONVENING A MEDICAL MALPRACTICE TRIBUNAL.

Massachusetts General Laws c. 231, § 60B provides that every "action for malpractice, error or mistake against the provider of healthcare shall be heard by a tribunal" consisting of a single Justice of the Superior Court, a physician and an attorney. Pursuant to the terms of this statute, all treatment related claims must therefore be referred to a medical malpractice tribunal.

Little v. Rosenthal, 376 Mass. 573, 382 N.E.2d 1037 (1978). Where a medical malpractice

action has been brought in a Court other than the Massachusetts Superior Court, the Court in which the action is brought should transfer the case to the Massachusetts Superior Court for the limited purpose of convening a medical malpractice tribunal. M.G.L. c. 231, § 60B; Feinstein v. Massachusetts General Hospital, 643 F.2d 880 (C.A. Mass. 1981); Austin v. Boston University Hospital, 363 N.E.2d 515, 372 Mass. 654 (1977).

Count I of Plaintiff's Complaint claims, among other things, that Defendant Fred Arrigg, M.D. has acted negligently and/or recklessly causing Richard Morrill's serious and permanent personal injuries. In particular, plaintiff claims that Defendant Fred Arrigg, M.D. negligently performed a tympano mastoidectomy allegedly resulting in injuries to the plaintiff including an encephalocele, right sided dizziness, and life threatening injuries requiring four surgeries.

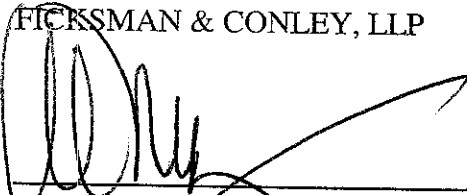
These allegations deal specifically with claims of inadequate or negligent treatment of the minor plaintiff, Richard Morrill by Fred Arrigg, M.D. and constitute an "action for malpractice, error or mistake." Therefore a medical malpractice tribunal hearing must be convened pursuant to Massachusetts General Laws c. 231, § 60B; Little v. Rosenthal, 376 Mass. 573, 382 N.E.2d 1037 (1978). Accordingly, this action should be transferred to the Massachusetts Superior Court for the limited purpose of convening a medical malpractice tribunal, in accordance with M.G.L. c. 231, § 60B.

CONCLUSION

For all of the foregoing reasons, the Defendant, Fred Arrigg, M.D. respectfully requests that this Honorable Court transfer this case to the Massachusetts Superior Court for the limited purpose of convening a medical malpractice tribunal.

Respectfully submitted,
By his attorneys,

FICKSMAN & CONLEY, LLP



KENNETH D. WEISS, BBO# 521240
NICOLE M. MASON, BBO# 647915
98 North Washington Street, Suite 500
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Signed under the pains and penalties of perjury.



NICOLE M. MASON

DATED: June 1, 2004

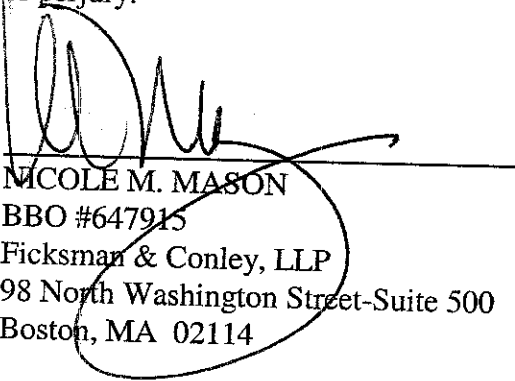
CERTIFICATE OF SERVICE

I, Nicole M. Mason, attorney for said defendant, hereby certify that I have this day served a copy of the foregoing **MOTION OF THE DEFENDANT, FRED G. ARRIGG, M.D., TO TRANSFER THE CLAIMS AGAINST HIM TO MASSACHUSETTS SUPERIOR COURT FOR THE LIMITED PURPOSE OF CONVENING A MEDICAL MALPRACTICE TRIBUNAL; and MEMORANDUM OF THE DEFENDANT FRED G. ARRIGG, M.D. IN SUPPORT OF HIS MOTION TO TRANSFER THE CLAIMS AGAINST HIM TO MASSACHUSETTS SUPERIOR COURT FOR THE LIMITED PURPOSE OF CONVENING A MEDICAL MALPRACTICE TRIBUNAL** upon all counsel by mailing a copy thereof, postage prepaid, directed to:

Joseph G. Abromovitz, Esq.
858 Washington Street - Third Floor
Dedham, MA 02026

Signed under the pains and penalties of perjury.

DATED: June 1, 2004



NICOLE M. MASON
BBO #647915
Ficksman & Conley, LLP
98 North Washington Street-Suite 500
Boston, MA 02114